

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

POWWOW LLC d/b/a PASS CHARTERS,

Plaintiff,

Case No: 2:17-cv-11142-AJT-EAS

v

Hon. Arthur J. Tarnow

VIA AIRLINES, INC. f/k/a CHARTER AIR
TRANSPORT, INC.,

Defendant.

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Attorneys for Plaintiff

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**DEFENDANT'S MOTION TO COMPEL PLAINTIFF'S
DISCOVERY RESPONSES TO DEFENDANT'S DISCOVERY REQUESTS**

NOW COMES Defendant Via Airlines Inc, f/k/a Charter Air Transport (Defendant or "Via Air") by and through its attorneys, Miller Canfield Paddock and Stone, PLLC, who hereby submits its Motion to Compel Plaintiff Powwow LLC, d/b/a/ Pass Charters (Plaintiff or "Pass Charters") to Respond to Defendant's Discovery Requests. In support of this Motion, Defendant states:

1. This dispute arises from a series of agreements between Plaintiff and Defendant involving the operation of a private air charter business.

2. On March 30, 2018, a Stipulated Order Extending Scheduling Dates was entered by the Court, permitting discovery in this matter to remain open until September 30, 2018.

3. On July 25, 2018, Defendant's current counsel filed an appearance in this matter. ECF No. 26.

4. On August 24, 2018, Defendant served Plaintiff with Defendant's First Set of Requests to Admit, Interrogatories and Requests for the Production of Documents ("Defendant's Discovery Requests") (attached as Exhibit 1).

5. Defendant's Discovery Requests seek relevant, non-privileged information directly related to the prosecution and/or defense of this matter.

6. On September 21, 2018 Plaintiff served its Responses to Defendant's Discovery Requests ("Plaintiff's Discovery Responses") (attached as Exhibit 2).

7. Many of Plaintiff's Discovery Responses to Defendant's Discovery Requests, however, are evasive, lack substantive answers, and are primarily comprised of boilerplate objections and other refusals to provide access to relevant, non-privileged information.

8. For example, Plaintiff's Discovery Responses instruct Defendant to "refer to the documents produced in response to Defendant's Request for Production." See, for example, Exhibit 2 - Plaintiff's Discovery Responses to Interrogatories Nos. 5-8, 11, 13 and 21. This would normally be considered a potentially acceptable response but for the fact that no documents were produced with Plaintiff's Discovery Responses on September 21, 2018, none have been produced at the time of filing this Motion to Compel and discovery motions due on or by Monday, October 1, 2018.

9. Because no documents have been produced by Plaintiff, Defendant does not and cannot reasonably ascertain whether or not the documents to which Plaintiff refers Defendant to review are actually responsive to Defendant's Discovery Requests. Defendant must therefore presume, until produced by Plaintiff and reviewed by Defendant, that they are not responsive.

10. Further, a significant number of Plaintiff's Discovery Responses also objected to Defendant's Discovery Requests on the basis that they were "vague," "overly broad," "unduly burdensome," "not sufficiently limited in scope or duration" and "not reasonably calculated to lead to the discovery of admissible evidence" and suggests that Plaintiff "qualify" its requests so that Plaintiff can "reconsider its answer." See, for example, Exhibit 2 - Plaintiff's Discovery Responses to Interrogatories Nos. 10, 12, 16, 19 and 23 and Requests for Production of Documents Nos. 2, 8 and 15.

11. In sum, many of Plaintiff's responses are lacking in merit and fail to comply with the Federal Rules of Civil Procedure.

12. Upon receipt and review of Plaintiff's inadequate responses, Defendant's counsel contacted Plaintiff's counsel to identify the numerous deficiencies with Plaintiff's responses and to request supplementation. Exhibit 3, E-mails between Plaintiff's Counsel and Defendant's counsel, September 21, 2018 to September 24, 2018.

13. A meet and confer telephone conference between counsel was scheduled and occurred on September 28, 2018 at approximately 10:30 am wherein Plaintiff's counsel represented that documents responsive to Defendant's Discovery Requests were forthcoming and such document production would also include responsive materials to an unspecified number of discovery responses wherein Plaintiff had made blanket objections without any offer of an

substantive response by Plaintiff such that Defendant's counsel would be "more than satisfied" with the production and materials.

14. With discovery nearing its close, Plaintiff's discovery tactics are unjustifiably interfering with Defendant's ability to properly and fully defend this matter and/or move the case towards meaningful resolution.

15. Plaintiff's counsel's written objections and oral promises of responsive documents do not negate Defendant's right, under the Federal Rules, to seek discovery from Plaintiff of relevant, non-privileged information.

16. As a result of Plaintiff's failure to comply with the Federal Rules of Civil Procedure and the Stipulated Order, this motion became necessary to compel Plaintiff to provide adequate and full discovery responses to Defendant's Discovery Requests.

WHEREFORE, Defendant respectfully requests an Order compelling Plaintiff to; (1) provide full and complete response to Defendant's Discovery Requests within seven (7) days of entry of the Order; (2) an Order Compelling Plaintiff to appear before the Court to show cause as to why Plaintiff failed to provide full and complete responses to Defendant's Discovery Requests; and; (3) pay Defendant's costs and attorneys' fees incurred in seeking the above referenced Orders.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Date: September 28, 2018

/s/ Philip E. Hamilton

Philip E. Hamilton (P68814)

Attorneys for Defendant

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269-381-7030
hamilton@millercanfield.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2018, I electronically filed the attached Defendant's Motion to Compel Plaintiff's Discovery Responses to Defendant's Discovery Requests with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Jonathan M. Martone, Attorney for Plaintiff at jmartone@clarkhill.com
Thomas M. Dixon, Attorney for Plaintiff at tdixon@clarkhill.com

Date: September 28, 2018

/s/ Philip E. Hamilton

Philip E. Hamilton (P68814)
Miller, Canfield, Paddock and Stone, P.L.C.
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**DEFENDANT'S BRIEF IN SUPPORT OF ITS
MOTION TO COMPEL PLAINTIFF'S DISCOVERY RESPONSES**

NOW COMES Defendant Via Airlines, Inc. f/k/a Charter Air Transport ("Via Air") by and through its attorneys, Miller Canfield Paddock and Stone, PLLC, who hereby submits the following for its Brief in Support of its Motion to Compel Plaintiff Powwow LLC d/b/a Pass Charters to Respond to Defendant's Discovery Requests. In support of its Motion, Defendant relies upon the arguments and authorities detailed in its Motion to Compel.

WHEREFORE, Defendant respectfully requests an Order compelling Plaintiff to; (1) provide full and complete response to Defendant's Discovery Requests within seven (7) days of entry of the Order; (2) an Order Compelling Plaintiff to appear before the Court to show cause as to why Plaintiff failed to provide full and complete responses to Defendant's Discovery Requests; and; (3) pay Defendant's costs and attorneys' fees incurred in seeking the above referenced Orders.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Date: September 28, 2018

/s/ Philip E. Hamilton

Philip E. Hamilton (P68814)

Attorneys for Defendant

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I hereby certify that on September 28, 2018, I electronically filed the attached Defendant's Brief In Support of Its Motion to Compel Plaintiff's Discovery Responses with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Jonathan M. Martone, Attorney for Plaintiff at jmartone@clarkhill.com

Thomas M. Dixon, Attorney for Plaintiff at tdixon@clarkhill.com

Date: September 28, 2018

/s/ Philip E. Hamilton

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Attorneys for Defendant